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WILLS — TESTAMENTARY CAPACITY — BURDEN OF PROOF.—*Held*, that the burden of proof is upon the proponent of a will to establish testamentary capacity of the testator by a preponderance of all the evidence. *Turner v. Butler* (Mo. 1913), 161 S. W. 745.

The decisions upon the question as to which side has the burden of proof in will contests involving the mental capacity of the testator are in irreconcilable conflict. The weight of authority is to the effect that upon proof of the due execution of a will which is in its nature not inconsistent with the sanity of the testator, the presumption of law makes out a *prima facie* case for the proponent and the burden is shifted upon the contestant to show incapacity. *Barnewall v. Murrell*, 108 Ala. 366; *McColloch v. Campbell*, 49 Ark. 367; *Matter of Motz*, 136 Cal. 558; *Steele v. Helm*, 2 Marv. (Del.) 237; *Johnson v. Johnson*, 187 Ill. 86; *Young v. Miller*, 145 Ind. 652; *Hull v. Hull*, 117 Ia. 738; *Woodford v. Buckner*, 111 Ky. 241; *In re Burns*, 121 N. C. 336; *Hoope's Estate*, 174 Pa. St. 373; *Allen v. Griffin*, 69 Wis. 529; *Bartee v. Thompson*, 8 Baxt. (Tenn.) 508. The contrary rule is that the burden of proof throughout the case is upon the proponent and does not at any time shift to the contestant. *Comstock v. Hadlyme Ec. Soc.*, 8 Conn. 261; *Evans v. Arnold*, 52 Ga. 169; *Robinson v. Adams*, 62 Me. 369; *Crowninshield v. Crowninshield*, 2 Gray (Mass.) 526; *Moriarty v. Moriarty*, 108 Mich. 249; *Hardy v. Merrill*, 56 N. H. 227; *Matter of Flansburgh*, 82 Hun (N. Y.) 49; *Beasley v. Denson*, 40 Tex. 416; *Williams v. Robinson*, 42 Vt. 658.